

REMARKS

Claims 1-117 were pending in the application. Claims 1-117 have been canceled, and new claims 118-134 have been added.

ELECTION

The January 9, 2007 Office Action divides the originally presented claims into 20 Groups, and asserts that Groups 1-20 “do not relate to a single inventive concept under PCT Rule 1.31 because, under PCT Rule 1.32 they lack the same or corresponding special technical feature.” January 9, 2007 Office Action at p. 6. The January 9, 2007 Office Action also asserts that the application contains claims directed to patentably distinct species. See January 9, 2007 Office Action at p. 6. In response to the requirements for election of Group and Species as set forth in the January 9, 2007 Office Action, and in accordance with 37 C.F.R. 1.143, the Applicants hereby provide the following provisional election with traverse:

Group 5, drawn to a method of diagnosing a disease characterized by expression of a tumor associated antigen, wherein the single tumor associated antigen nucleic acid is SEQ ID NO. 19 and the species is the tumor associated antigen.

The claims originally associated with Group 5 as defined by the January 9, 2007 Office Action included claims 33-35. Applicants believe that new claims 118-134 read on the elected grouping, and therefore request prosecution of those claims on the merits.

Applicants respectfully traverse the division of Group 5 into a multitude of subgroups that each correspond to a single tumor antigen nucleic acid sequence. Applicants respectfully disagree with the assertion that the "tumor antigens present structurally and functionally distinct inventions not a species." See January 9, 2007 Office Action at p. 3.

In particular, the present application recognizes that the expression of certain molecules is increased in a diseased state. The expression of both the nucleic acid and the polypeptide it encodes are thus elevated. Applicants believe that SEQ ID NOs. 19-21 and 54-57, along with the polypeptides of SEQ ID NOs. 22-24 and 58-61 encoded thereby, can be searched together and do not pose a serious burden on the Examiner. These sequences are splice variants of the TPTE nucleic acid, and are thus encoded by the same gene. The splice variants are very similar and can be seen in Figures 5 and 6 of the present application. Applicants respectfully submit that a single search could be performed that would encompass the sequence of all of the splice variants. Applicants therefore respectfully request reconsideration and modification of the election requirements to allow claims encompassing the sequence of the splice variants including SEQ ID NOs. 19-21 and 54-57, along with the polypeptides of SEQ ID NOs. 22-24 and 58-61 encoded thereby.

CONCLUSION

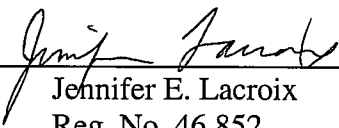
In accordance with the Remarks provide above, Applicants provisionally elect, with traverse, the above described grouping (Group 5) for purposes of prosecution on the merits. Applicants believe that new claims 118-134 read on the elected grouping, and therefore request prosecution of those claims on the merits.

Applicants' election is made without prejudice to their right to file one or more divisional applications directed to any non-elected subject matter.

Applicants believe that a fee of \$ 450.00 is due in conjunction with the two month Petition for Extension of Time submitted herewith. The Commissioner is authorized to charge the \$450.00 fee, along with any additional fees that may be necessary, or credit any overpayment, to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017, with regard to this Response.

Respectfully submitted,

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